

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH R CHAVEZ,

Plaintiff,

v.

No. 19-cv-1087-MV-GBW

PENITENTIARY OF NEW MEXICO,
JOHN GAY, HOPE SALAZAR,
JESSICA HERERRA, ALISHA
TAFOYA LUCERO, DENNIS MARES,
and DIANA BLANCHARD,

Defendants.

ORDER OF DISMISSAL

THIS MATTER is before the Court after Plaintiff Joseph R Chavez declined to file an amended civil rights complaint. Plaintiff is a prisoner in the custody of the New Mexico Corrections Department (“NMCD”), housed at Northeast New Mexico Detention Facility. He is proceeding *pro se*. Plaintiff commenced this action by filing a tort complaint in the First Judicial District Court, County of Santa Fe, State of New Mexico on May 29, 2019. (Doc. 1-1) (the “Complaint”). Defendants removed the matter to this Court on November 20, 2019. (Doc. 1). In the Complaint, Plaintiff alleged that Defendants were failing to comply with numerous state statutes, NMCD polices, and federal standards. (Doc. 1-1 at 4). He also claimed that Defendants violated his rights under the Eighth and Fourteenth Amendments to the United States Constitution. (Doc. 1-1 at 10).

By a Memorandum Opinion and Order entered September 7, 2022, the Court dismissed the Complaint for failure to state a claim upon which relief could be granted. (Doc. 3) (the “MOO”). The Court’s analysis of Plaintiff’s claims included an overview of the governing United States

Supreme Court and Tenth Circuit case law. Consistent with *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991), the Court gave Plaintiff 90 days to file an amended complaint. The Court advised Plaintiff that failure to abide by the deadline could result in dismissal of this case without further notice.

The Court mailed a copy of the MOO to Plaintiff at the Penitentiary of New Mexico, in Santa Fe, which was then his address of record. (Doc. 4). The mail was returned as undeliverable on September 28, 2022. (Id.). The Court searched NMCD's website and discovered that Plaintiff had been moved to the Northeast Detention Center in Clayton, New Mexico. On September 28, 2022, the Court re-sent a copy of the MOO to Plaintiff at his new address.

More than 90 days has passed since the Court re-sent the MOO to Plaintiff. Plaintiff did not file an amended complaint, nor did he seek to extend the deadline or otherwise respond. For these reasons and for the reasons set forth in the MOO, this action will be dismissed with prejudice.

IT IS THEREFORE ORDERED that this action is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A and Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

The Court will enter a final judgment herewith.



HONORABLE MARTHA VÁZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE